

January 30, 2019

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Phone: (202) 566 - 1667

Regional Freedom of Information Officer
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866
Phone: (212) 637 – 3000

By USPS, return receipt requested, and email

Re: Freedom of Information Act Request

To Whom It May Concern:

Northern Manhattan Improvement Corp. (“NMIC”) Legal Services, a public interest law firm, and Professors Emily Benfer and Katherine Franke of the Health Justice Advocacy Clinic of Morningside Heights Legal Services, Inc., (“MHLS”) a public interest law firm housed at Columbia Law School (collectively, “the Requesters”) submit this request under the Freedom of Information Act (FOIA) for information regarding the enforcement in New York State of 40 C.F.R. Part 745 subpart E (“Residential Property Renovation,” also known as the Repair, Renovation and Painting Rule (“RRP Rule”)).

We ask that you please direct this request to all appropriate offices or departments within the Environmental Protection Agency.

PURPOSE OF REQUEST

The purpose of this request is to obtain information for the Requesters and the public on the enforcement of the RRP Rule.

DEFINITIONS

- 1. Records:** For the purpose of this request, the term “records” includes, but is not limited to, information of any kind and stored in any manner in the possession of the EPA. This includes writings, letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, voicemails, telefaxes, e-mails, calendar invitations, documents, databases, drawings, graphs, charts, photographs, presentations, minutes of meetings, electronic and magnetic records of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records at any stage of development, whether proposed, draft, pending, interim, final, or otherwise. We request

that all documents be provided in native file format with metadata. No category of material should be omitted from search, collection, and production.

2. **Communication(s):** In this request, the term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).
3. **The Repair, Renovation and Painting Rule (“RRP Rule”):** For the purpose of this request, “RRP Rule” refers to any mentions or allusions to 40 C.F.R. Part 745 subpart E, §§ 745.80-.92, or any other enforcement by the EPA or state agencies designed to address renovations, repairs, or painting that disturbs lead based paint in buildings.
4. **Geographic Location:** For the purpose of this request, the phrase “geographic location” should be construed, where applicable, to mean geo location, geographic data, geo data, census tract, census data, GPS location, zip code data, zip code, city, county, or any other format of geographic location possible.

For the purposes of this FOIA request, Requesters seek information on these topics from January 1, 2009 to Present.

RECORDS SOUGHT

Under provisions of FOIA, we respectfully request the following:

1. All documents, records, and communications regarding, in whole or in part, compliance with the RRP Rule in New York State, including but not limited to:
 - a. The number of RRP trainings conducted;
 - b. The number of firms or workers who have received RRP training;
 - c. The number of certifications issued pursuant to 40 CFR § 745.90;
 - d. The annual number of certifications issued for New York firms issued pursuant to 40 CFR § 745.90;
 - e. The number of pre-renovation warnings and/or notices issued pursuant to 40 CFR § 745.84;
 - f. The total number of pre-renovation warnings and/or notices issued pursuant to 40 CFR § 745.84;
 - g. The annual number of pre-renovation warnings and/or notices issued pursuant to 40 CFR § 745.84.
2. All documents, records, and communications regarding, in whole or in part, investigations of RRP Rule violations in New York state, including but not limited to:
 - a. The total number of investigations of RRP Rule violations;
 - b. The annual number of investigations of RRP Rule violations;
 - c. The geographic location of investigations of RRP Rule violations;
 - d. The average length of time (from complaint to closing) that investigations have lasted;
 - e. The number and/or percentage of investigations that were resolved;
 - f. The manner in which each investigation may be resolved;

- g. The manner in which each investigation actually was resolved;
 - h. The number and/or percentages of resolutions by manner of resolution.
3. All documents, records, and communications from January 1, 2009 to present regarding, in whole or in part, known violations of the RRP Rule in New York state, including but not limited to:
 - a. The total number of violations of the RRP Rule;
 - b. The annual number of violations of the RRP Rule;
 - c. The geographic location of violations of the RRP Rule;
 - d. Citations issued to contractors, landlords, or other private actors as a result of RRP Rule violations;
 - e. Penalties imposed on contractors, landlords, or other private actors as a result of RRP Rule violations;
 - f. Civil or criminal fines imposed as a result of RRP Rule violations;
 4. All records of communications between EPA Region 2 and any agencies or employees of the State of New York, including:
 - a. Training and certifications of firms or workers;
 - b. Investigations or complaints pertaining to violations of the RRP Rule.
 5. All records pertaining to 2009 discussions, analysis, or consideration concerning the subject of New York assuming administration of the RRP Rule, pursuant to 40 CFR Part 745 Subpart Q.
 6. All records on referrals to EPA Region 2 from New York for violations of the RRP rule and pre-renovation disclosure, under 40 CFR § 745.84.
 7. All records analyzing the number of incidence of persons with elevated blood lead levels where renovations, repairs, or other work practices may have resulted in lead exposure on or after January 1, 2009.

In addition to the records requested above, the Requesters also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

To the extent that this request encompasses any documents that contain confidential information, we request that the EPA redact portions of the requested documents that are deemed confidential, and disclose redacted documents to the fullest extent possible, as well as the basis for any such redactions.

To facilitate the EPA's prompt response to the FOIA Request, we propose the following search terms, as well as any acronym, nickname, or other variation of these terms. This list is only meant to provide guidance and is not exhaustive:

- The Repair, Renovation and Painting Rule
- The RRP Rule
- RRP
- Lead training
- "Pre-1978" building
- "Pre-1978" homes
- Lead-based paint
- Lead hazard exposure
- Elevated blood lead level
- Blood lead level
- Lead hazard
- Results of risk assessment
- Dust wipe
- Dust wipe inspection
- Visual assessment
- Visual inspection
- Lead paint inspection
- Lead paint exposure

We request you institute a preservation hold on information responsive to this request. To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Requesters welcome an opportunity to discuss their request with you before you undertake your search or incur search or duplication costs.

REQUESTERS ARE ENTITLED TO EXPEDITED PROCESSING AND FEE WAIVER

The above requests are matters of the public interest. These records concerns the operations of the state and federal government, and the disclosure of these records will contribute to public understanding of these operations in a significant way. There is an urgent need to inform the public about lead poisoning and lack of information leads to a significant threat to public safety. Children are the most affected populations, and lead poisoning can be fatal. This information is not sought for commercial purposes.

The RRP Rule requires certain safe work practices and training of persons who do work in residential dwellings that disturbs paint that may contain lead. It is designed to help prevent children from developing lead poisoning, which can cause damage to the brain and nervous system, as well as learning and behavioral challenges. At high exposure levels, lead can also result in slowed growth and development, and hearing and speech problems. At extreme levels, it can result in a child's death. In New York, the law is enforced by staff from EPA Region 2. Requesters are concerned that due to extremely limited resources, the EPA is unable to adequately enforce the RRP Rule.

Accordingly, we respectfully request a fee waiver and expedited processing of this request. If the fee waiver is denied, please provide us with prior notice if any fees will be incurred so that we can discuss arrangements.

This FOIA request meets the requirements for a waiver of fees, and NMIC and MHLS request that any fees be waived. In the event that EPA does not waive fees, we ask EPA to notify us of the basis for its decision and to provide an estimate of costs. Please do not move forward with actions that would require expenditures until Columbia University has the opportunity to consider an appeal and the estimate of costs. EPA must consider three factors in determining whether the disclosure of the information requested with this FOIA Request is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,” and thus whether the requirements for a waiver of fees are satisfied. 28 C.F.R. § 16.10(k)(2). As demonstrated below, each of the three factors, along with consideration of component criteria for the satisfaction of said factors, weighs in favor of granting a fee waiver.

I. *Disclosure of the Requested Information Would Shed Light on the Operations or Activities of the Government.*

To meet this criteria, the request “must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.” 28 C.F.R. § 16.10(k)(2)(i).

The documents requested concern EPA’s enforcement of the RRP rule, and whether the EPA is adequately enforcing these rules. This is part of the federal government’s broad objective as well as the statutory directives given to EPA. The Toxic Substances Control Act requires that individuals performing renovations in lead paint exposure risk units are “properly trained; renovators and firms performing these renovations are certified; and the work practices in § 745.85 are followed during these renovations.” 40 C.F.R. § 745.80(b), 40 C.F.R. § 745.82(b). Additionally, “lead-based paint is assumed to be present at renovations covered by this subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance.” 40 C.F.R. § 745.87(e). These provisions are in place to protect public safety, the EPA has an obligation to enforce these statutes, and disclosure of these documents would assist in public understanding of the EPA’s operations in enforcing these regulations.

II. *Disclosure of the Requested Information is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.*

There are two requirements for the satisfaction of this criterion: (A) Disclosure of the requested records must be meaningfully informative about government operations or activities; and (B), The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. 28 C.F.R. § 16.10(k)(2)(ii).

The requested information is “meaningfully informative” to an understanding of EPA’s enforcement of the RRP rule because it will supply critically important information that is not currently available to the public. 40 C.F.R. § 2.107(k)(2)(ii)(A). This request seeks documents that will supply the public with information about how EPA assesses and investigates claims of lead exposure, which pose a threat to public health and safety. While limited information on this subject is available to the public, the requested documents will give a more complete picture of what EPA has done to enforce these regulations in Region 2 given scarce resources.

This information is likely to benefit the public at large because it will give helpful information to anyone wishing to file a complaint relating to lead exposure enforcement with the EPA and to contractors and others who need to maintain compliance with the TSCA. It will also assist tenants who seek to enforce safety standards in their homes and communities. The Requesters will make this information available through its own networks, listservs, and online locations such as the repository of civil rights enforcement information at https://drive.google.com/drive/folders/0B__743UjVspgRTAxMGszanBKOXc. When filing a complaint, it is beneficial for the complainant to understand how EPA will assess that complaint and what burden the complainant has to show that a violation has occurred. The Requesters are especially able to convey this information publicly due to each of their expertise. NMIC offers legal and social services around housing issues, including lead exposure, in New York City, and MHLS legal clinic students educate, represent or collaborate with community groups, tenant associations, nonprofit organizations, members of Congress, or governmental agencies to remedy systemic issues that affect health outcomes.

III. *The Disclosure Must Not Be Primarily in the Commercial Interest of the Requester.*

Components consider the following in the determination of this factor: (A) whether requester has any commercial interest that would be furthered by the requested disclosure; and, (B) if there is any commercial interest, whether that is the primary interest furthered by the request. 28 C.F.R. § 16.10(k)(2)(iii).

NMIC is a nonprofit organization that has no commercial interests whatsoever. Morningside Heights Legal Services, Inc., a public interest law firm housed at Columbia Law School, which has no commercial interests whatsoever. By requesting these documents, the Requesters seeks to understand more about administrative assessment of complaints and enforcement, and to increase public knowledge of the same. Since the Requesters have no commercial, trade, or profit interest, the requested disclosure is “not primarily in the commercial interest of the requester.” 28 C.F.R. § 2.107(k)(2)(iii)(A).

Northern Manhattan Improvement Corp. Legal Services (NMIC): Founded in 1979, NMIC provides comprehensive free legal services to residents of Manhattan and the Bronx regarding housing, public benefits, environmental justice, disability, consumer debt and domestic violence matters. NMIC also provides group advocacy to tenant associations to improve local housing conditions; supports impact litigation benefiting low-income City residents in the areas of housing, public benefits, disability, and environmental justice (particularly childhood lead poisoning prevention); and gives specialized services on domestic violence, post-eviction, elder law, mental health, immigration, and consumer debt matters.

The Morningside Heights Legal Services, Inc. Health Justice Advocacy Clinic at Columbia Law: The Morningside Heights Legal Services, Inc. is a public interest law firm housed at Columbia Law School. The Health Justice Advocacy Clinic focuses on interprofessional problem solving and addressing barriers to health for low-income populations and communities of color. Economic, cultural, environmental and social conditions threaten the health of nearly 40 million individuals living in poverty nationwide. The clinic employs creative advocacy strategies to improve the health of low-income individuals and communities. Students in the clinic educate, represent or collaborate with community groups, tenant associations, nonprofit organizations, members of Congress, or governmental agencies to remedy systemic issues that affect health outcomes.

FORMAT OF PRODUCTION

Please search for responsive records regardless of format, medium, or physical characteristics, including electronic records. Please refrain from sending paper records and provide the requested records in the following format:

- In PDF or TIF formats;
- In electronically searchable format;
- Each record saved in a separately saved PDF file;
- Parent-child relationships maintained, meaning that the requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

INSTRUCTIONS FOR RECORD DELIVERY

FOIA requires that an agency respond to a request within five business days of receipt of a request. Therefore, we would appreciate a response as soon as possible and look forward to hearing from you shortly. If for any reason any portion of this request is denied, please inform us of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Please send records electronically to Professor Katherine Franke at the following address:

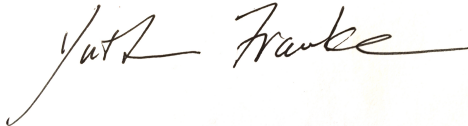
Katherine Franke
kfranke@law.columbia.edu
Jerome Greene Hall
Room 626
435 West 116th Street
New York, NY 10027

If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Please also contact Katherine Franke via email at kfranke@law.columbia.edu or phone at (212) 854 - 0061 in the event that you have any questions concerning the type of materials we request, or have concerns regarding the scope of the request.

Thank you for your assistance in this manner.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kath Franke", written in a cursive style.

Katherine Franke
Sulzbacher Professor of Law
Columbia University
435 W. 116th Street
New York, NY 10027
212.854.0061
212.854.7946 (fax)
kfranke@law.columbia.edu

On behalf of the Requesters